No 09-781

In the
SUPREME COURT OF THE UNITED STATES

State of Minnesota, *Petitioner,*

v

Danon Jason Russell, *Respondent*

On Petition for a Writ of Certiorari to the
Court of Appeals of the State of Minnesota

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUZANNE M SENECAL-HILL
Counsel of Record
Assistant Minnesota State Public Defender

Office of the Minnesota State Public Defender
540 Fairview Avenue North
Suite 300
St Paul, MN 55104
(651) 201-6700

Attorney for Respondent

BRIEF IN OPPOSITION

Respondent, Danon Jason Russell, respectfully submits the following brief in opposition to the petition for writ of certiorari filed in the above-named matter. This Court should deny the petition for at least three reasons. First, the Minnesota Court of Appeals' decision is grounded on independent state law, second, the core of petitioner's argument would require this Court to act as an error-correcting court and renders irrelevant the analysis of this Court's decision in *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984), and third, the Minnesota Court of Appeals correctly interpreted this Court's decision in *Lopez-Mendoza*. For these reasons, this case is not a proper or effective vehicle for addressing the split of authority on the application of *Lopez-Mendoza*, and this Court should deny the certiorari petition.

I. THE PETITION FOR WRIT OF CERTIORARI DOES NOT MEET THIS COURT'S STANDARDS FOR GRANTING REVIEW BECAUSE THE MINNESOTA COURT OF APPEALS' DECISION IS GROUNDED ON INDEPENDENT STATE LAW AND BECAUSE PETITIONER IS ASKING THIS COURT TO CORRECT THE MINNESOTA COURT OF APPEALS' ALLEGED ERROR IN A DECISION THAT IS NOT PRECEDENTIAL.

In an unpublished opinion, over which the Minnesota Supreme Court denied review, the Minnesota Court of Appeals concluded that the district court erred in refusing to suppress respondent's statement, which included his true name, the police obtained after unlawfully seized him. Pet. App., 8-9.[1] The court analyzed respondent's statement just as it would any other piece of evidence the police obtained as a result of an unlawful seizure and determined the evidence must be suppressed as fruit of the unlawful seizure.

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[1] "Pet. App." denotes petitioner's appendix.

Id In reaching this decision, the court also recognized that this Court's decision in *Lopez-Mendoza* "simply restates a long-standing legal principle unlawful police activity does not affect the court's jurisdiction or require dismissal of the prosecution, but unlawful police activity may affect the admissibility of evidence " *Id* at 10

A. Because the Minnesota Court of Appeals' Decision Is Grounded on Independent State Law, This Court Lacks Jurisdiction and Therefore Any Decision Would be Advisory Only.

"This Court will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment " *Coleman v Thompson* 501 U S 722, 729 (1991) (citations omitted) "Because this Court has no power to review a state law determination that is sufficient to support the judgment, resolution of any independent federal ground for the decision could not affect the judgment and would therefore be advisory " *Id* (citation omitted)

Petitioner urges this Court to grant review because of the federal circuit-court division on the interpretation and application of *Lopez-Mendoza* The Minnesota Court of Appeals' decision, however, was not premised on *Lopez-Mendoza* Instead, the court applied clearly established *state* law to determine whether the district court erred in refusing to suppress evidence the police obtained as a result of an unlawful seizure, specifically, respondent's statement, which included his true name The court began its analysis by determining whether the police unlawfully seized respondent, recognizing that Minnesota's constitution affords greater protection against unreasonable searches and seizures than does the federal constitution Pet App , 5-6 Applying state law, the

court determined that the police unlawfully seized respondent Pet App , 5-7 Then, the court again applied clearly established state law and determined that the district court erred in refusing to suppress the evidence (i e , respondent's statement) the police acquired after unlawfully seizing him [2] Pet App , 8-11 The court referenced *Lopez-Mendoza* only to clarify that it was not ruling on suppression of respondent's identity, it merely was ruling on suppression of his statement As the court explained, "[T]he state mischaracterizes what [respondent] sought to suppress His motion to the district court sought to suppress his statement of identification made after the arrest, not his identity itself This is an important distinction, as *Lopez-Mendoza* bears out " Pet App , 9

The Minnesota Court of Appeals' decision did not deny the district court jurisdiction over respondent Instead, the court's decision simply denied petitioner the ability to use *evidence* the police obtained unlawfully Because the court s decision was grounded on clearly established state law relating to suppression of evidence following an unlawful police seizure, there is no federal-law issue for this Court to decide Therefore, in compliance with the clear-statement rule and this Court's policy to avoid issuing advisory opinions, this Court should deny the certiorari petition *See Michigan v Long*, 463 U S 1032, 1041 (1983) (recognizing that given Court's policy to avoid advisory opinions, Court generally declines to decide issues when state court has clearly stated that its judgment is based on state grounds), *Herb v Pitcairn*, 324 U S 117, 126 (1945)

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[2] The Minnesota Court of Appeals relied on *State v Bergerson*, 659 N W 2d 791 (Minn App 2003), to analyze whether respondent's statement was the fruit of the unlawful seizure The court also relied on *State v Hardy*, 577 N W 2d 212 (Minn 1998), to identify the purpose of the exclusionary rule, which is to deter police misconduct

(recognizing if same judgment would be rendered by state court after this Court corrected federal-law issues, Court's review is nothing more than advisory opinion)

B. Petitioner Is Asking This Court to Act as an Error-Correcting Court on an Issue That Does Not Require This Court to Address *Lopez-Mendoza*.

Petitioner argues that the court of appeals' interpretation of *Lopez-Mendoza* is flawed because

> the officers' stop of [respondent] did not yield any evidence to be used against him The state has never attempted to introduce any physical evidence obtained at the time of the stop or the substance of any statements [respondent] made [3] The probable-cause portion of the search warrant that yielded [respondent's] DNA does not contain any evidence obtained from the stop [4]

Petition, 5 [5] Petitioner also urges this Court to remand this case back to the court of appeals if this Court rules in petitioner's favor on the suppression issue Petition, 3 n 1 Petitioner's assertions reveal the real issue petitioner wants this Court to address Was the Minnesota Court of Appeals' decision error because the court failed to determine whether, regardless of the suppression of respondent's statement, there is still probable cause to support the search warrant?

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[3] This assertion is not accurate At trial, one of the arresting officers testified that respondent initially gave the officers a false name and date of birth before providing them with his true name and date of birth Resp App , 1-5 The state used this testimony against respondent in closing argument Resp App , 6

[4] As demonstrated more fully on page 6 of this brief, this assertion is not accurate

[5] "Petition" denotes the certiorari petition

The core of respondent's argument is that probable cause for the search warrant did not depend on respondent's statement.[6] This argument, however, renders irrelevant any need for this Court to address *Lopez-Mendoza*. That is, under petitioner's theory, whether the probable cause supports the search warrant does not depend on this Court's – or any court's – analysis of *Lopez-Mendoza* because the probable cause has nothing to do with respondent's statement or his identity. This means that analysis of *Lopez-Mendoza* is not dispositive of this case. Therefore, if this Court grants review, this Court merely would be acting as an error-correcting court on the probable-cause issue and issuing an advisory opinion on the *Lopez-Mendoza* issue.

Because the Minnesota Court of Appeals applied independent, state law in concluding that the district court erred in refusing to suppress the evidence of respondent s statement and because the foundation of petitioner's argument in the certiorari petition does not provide this Court with a tangible opportunity to address *Lopez-Mendoza*, petitioner has not articulated compelling reasons for this Court to grant review of an unpublished opinion from the Minnesota Court of Appeals that carries no precedential weight for future cases in Minnesota. *See* Sup. Ct. R. 10 (instructing Court will only grant review on certiorari for compelling reasons); Minn. Stat. § 480A.08, subd. 3 (2008) (instructing court of appeals' unpublished opinions are not precedential).

[6] Petitioner also implies that respondent's outstanding warrant dissipated any taint of the unlawful seizure. Petition, 6. Petitioner, however, neither raised nor briefed this argument in the Minnesota Court of Appeals.

II. THE MINNESOTA COURT OF APPEALS CORRECTLY RECOGNIZED THAT *LOPEZ-MENDOZA* DOES NOT ALLOW A DEFENDANT TO CHALLENGE A COURT'S JURISDICTION EVEN IF THE COURT ACQUIRED JURISDICTION ONLY BECAUSE LAW ENFORCEMENT UNLAWFULLY OBTAINED EVIDENCE OF THE DEFENDANT'S IDENTITY.

The evidence suppressed in this case was respondent's unlawfully obtained statement, which included his true name. Petitioner maintains that the statement is not suppressible because petitioner classifies respondent's statement as identity, not evidence. In support of petitioner's classification, petitioner asserts that "[t]he probable-cause portion of the search warrant that yielded [respondent's] DNA does not contain any evidence obtained from the stop." Petition, 5. This assertion is not accurate. The probable-cause portion of the search-warrant application does, in fact, reference respondent's statement he made after the police unlawfully seized him. The officer who applied for the search warrant attested that the arresting officers had detained respondent and asked for his name. Resp. App. 7.[7] The officer also attested that respondent gave the arresting officers a false name and date of birth before providing them with his true name. *Id.* These facts demonstrate that the police relied on respondent's unlawfully obtained statement as evidence to help them acquire the search warrant for respondent's DNA.

Petitioner also defends its argument that respondent's statement is identity that is not suppressible by relying on this Court's instruction in *Lopez-Mendoza* that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest." 468 U.S. at 1039 (citations omitted).

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[7] "Resp. App." denotes respondent's appendix.

Petitioner notes that the federal circuit courts of appeals are split on whether *Lopez-Mendoza* means that 1) identity and identity-related evidence the police obtained unlawfully is never suppressible or 2) a defendant is precluded from challenging a court's jurisdiction over him even if the court acquired jurisdiction solely because the police unlawfully obtained evidence of a defendant's identity

Regardless of the federal circuit-court split on interpreting *Lopez-Mendoza*, the Minnesota Court of Appeals correctly concluded that *Lopez-Mendoza* applied to jurisdiction, not to unlawfully obtained evidence That interpretation is grounded on the caselaw this Court relied on in *Lopez-Mendoza* when instructing that the body or identity of a defendant is never suppressible The caselaw this Court cited relates solely to the question of jurisdiction *Lopez-Mendoza*, 468 U S at 1039-40 For example, in *Gerstein v Pugh*, this Court concluded that a defendant's unlawful arrest or detention does not void a subsequent conviction *Gerstein v Pugh*, 420 U S 103, 119 (1975) This Court reached a similar conclusion in *Frisbie v Collins*, instructing "the power of a court to try a person for [a] crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction '" *Frisbie v Collins*, 342 U S 519, 522 (1952) (footnote omitted), *see also United States ex rel Bilokumsky v Tod*, 263 U S 149, 158 (1923) (concluding deportation proceeding not void merely because police lacked probable cause to arrest defendant)

In further support of this Court's instruction that the body or identity of a defendant is never suppressible, this Court in *Lopez-Mendoza* relied on a line of cases involving forfeiture proceedings, all of which instructed that a forfeiture proceeding is

valid even if law enforcement obtained the contraband or property through unlawful means *Lopez-Mendoza*, 468 U S at 1040 (citing *United States v Eighty-Eight Thousand Five Hundred Dollars*, 671 F 2d 293, 296-97 (8th Cir 1982), *United States v One (1) 1971 Harley-Davidson Motorcycle*, 508 F 2d 351, 351 (9th Cir 1982), *United States v One 1965 Buick*, 397 F 2d 782, 784 (6th Cir 1968))

Even more instructive is how this Court applied the prior decisions in *Gerstein*, *Frisbie*, and *Tod* to the facts of *Lopez-Mendoza* Both respondent Lopez-Mendoza and respondent Sandoval-Sanchez challenged their deportation orders on the ground that immigration officials unlawfully arrested them *Lopez-Mendoza*, 468 U S 1034 The Ninth Circuit Court of Appeals vacated and remanded Lopez-Mendoza's deportation order to determine whether his Fourth Amendment rights had been violated *Id* at 1034-35 The Ninth Circuit reversed Sandoval-Sanchez's deportation order because his admission that he was in this country unlawfully was the fruit of an unlawful arrest *Id* at 1034

This Court reversed the Ninth Circuit's decision regarding Lopez-Mendoza precisely because Lopez-Mendoza did not challenge any evidence the immigration officials obtained during his unlawful arrest *Lopez-Mendoza*, 468 U S at 1040 Instead, Lopez-Mendoza merely moved to terminate the deportation proceedings because he was arrested unlawfully *Id* at 1035, 1040 That is, this Court applied the prior decisions of *Gerstein*, *Frisbie*, and *Tod* and reversed the Ninth Circuit's decision because Lopez-Mendoza only challenged the immigration court's *jurisdiction* over him

In contrast, Sandoval-Sanchez did challenge the evidence the immigration officials obtained from his unlawful arrest *Id* at 1040 The facts of Sandoval-Sanchez's case raised the true issue this Court addressed in *Lopez-Mendoza* Whether the exclusionary rule should apply to civil deportation proceedings when immigration officers, as they had done in Sandoval-Sanchez's case, obtained evidence only by unlawfully arresting someone *Id* at 1040-1050 This Court ultimately concluded that the "balance between costs and benefits comes out against applying the exclusionary rule " *Id* at 1050

Unlike Lopez-Mendoza, respondent in this case did not challenge the district court's jurisdiction over him because the police unlawfully seized him In fact, respondent specifically clarified that he was not challenging jurisdiction Instead, much like Sandoval-Sanchez, respondent only challenged the statement (i e the evidence) the police obtained as a result of the unlawful seizure Therefore, the Minnesota Court of Appeals correctly articulated the application of *Lopez-Mendoza* to criminal proceedings A defendant may not challenge jurisdiction following an unlawful arrest, but he may challenge identity-related evidence the police obtained only because of the unlawful arrest Pet App , 10

In *Lopez-Mendoza*, the question presented was whether the exclusionary rule should apply to civil deportation proceedings 468 U S at 1040-41 This Court acknowledged "[t]he general rule in a criminal proceeding is that statements and other evidence obtained as a result of an unlawful, warrantless arrest are suppressible if the link between the evidence and the unlawful conduct is not too attenuated " *Id* (citing *Wong Sun v United States*, 371 U S 471, 487-88 (1963)) Applying this general rule, it is clear

that the evidence the immigration officials obtained by unlawfully seizing Sandoval-Sanchez would have been governed by the exclusionary rule had he challenged the evidence in a criminal proceeding This is precisely the set of facts this Court is presented with respondent moved to suppress his statement the police obtained by unlawfully seizing him The police relied on this evidence, in part, to acquire a search warrant for respondent's DNA Because the Minnesota Court of Appeals faithfully followed the distinction this Court made in *Lopez-Mendoza* between challenging identity to deny a court's jurisdiction and challenging the prosecution's ability to use unlawfully obtained identity-related evidence, the court's unpublished opinion with no precedential authority is not a proper or effective vehicle for this Court to address the federal circuit-court split regarding *Lopez-Mendoza* For these reasons, this Court should deny the certiorari petition

CONCLUSION

For the reasons stated herein, this Court should deny the petition for writ of certiorari.

Dated March 11, 2010

Respectfully submitted,

Suzanne M. Senecal-Hill
Counsel of Record
Assistant Minnesota State Public Defender

Office of the Minnesota State Public Defender
540 Fairview Avenue North
Suite 300
St. Paul, MN 55104
(651) 201-6700

Attorney for Respondent